IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.735 OF 2005
WITH
CRIMINAL APPEAL NO.736 OF 2005

M/s. India Med Tronics Pvt.Ltd. ..Applicant

Vs.

M/s.Ekvira Surgicals Co. and Anr. ..Respondents

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Mr.Omar Khaiyam Shaikh i/b Mr.Wajid Shaikh for Appellant
Mr.Prasad Rao for Respondent no.1
Mr.S.R.Shinde, A.P.P. for Respondent-State

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATE OF RESERVING THE ORDER : 05.08.2005
DATE OF PRONOUNCING THE ORDER : 17.08.2005

P.C.

1. Heard the learned advocate for the appellant i.e. original complainant and learned advocate for respondents nos.1 and 2 original accused.

3. The appellant had filed two complaints against the Respondent nos.1 and 2 under Sections 138 r.w. 141 and 142 of Negotiable Instruments Act. The said complaints were filed before the Metropolitan Magistrate, 10th Court Andheri, Mumbai and they were numbered as C.C.No.1890/S/2003 and 1891/S/2003. By order dated 18.5.2005 the learned Magistrate dismissed the complaints on the ground that the complainant was absent. Being aggrieved by this order, the present appeals have been preferred.

4. The learned advocate for the complainant has submitted that from the Roznama, it is clear that on all previous occasions except on 15.4.2005 and 18.5.2005, the complainant was present. Copy of the Roznama is annexed as Exhibit-B. This fact is also not disputed by the learned advocate for the Respondents. The learned advocate for the complainant has admitted that on 15.4.2005 the complainant was absent. The reason why the complainant was absent on that date, has been stated in the appeal memo and in the application. It is also pointed out that on 18.5.2005 actually

the representative of the complainant as well as his advocate were present before the Court. However, just when the matter was called out, the appellant's advocate was not present in the Court room. However, shortly thereafter, when he came back, the order of dismissal of complaints had already been passed. Immediately, oral application for restoration of the complaints was made, however, the learned Magistrate expressed his inability to restore the said cases in absence of his power to do so. These facts are not disputed by the learned advocate for the respondent nos.1 and 2 and he on instructions, has stated that he has no objection to the said complaints being restored on costs being paid to the respondents-accused.

5. Looking to the facts and circumstances of this case, I am of the opinion that in the interest of justice the order dated 18.5.2005 dismissing the complaints deserves to be set aside. Accordingly, the orders dated 18.5.2005 dismissing the complaints i.e. C.C.No. 1890/S/2003 and 1891/S/2003 are set aside and the complaints are

restored to file on condition that the complainant deposits Rs.2500/- in each case as costs before the trial Court. On the amounts being deposited, respondents nos.1 and 2 are permitted to withdraw the said amount. On the amounts being deposited, the complaints be restored to file.

6. Appeals are allowed.

[SMT.V.K.TAHILRAMANI,J.]